The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation, Plaintiff, v. DANIEL POWERS, an individual, Defendant.	No. 2:12-CV-1911 COPY OF MOTION FOR TEMPORARY RESTRAINING ORDER PENDING IN SUPERIOR COURT AT TIME OF REMOVAL

Attached hereto as Exhibit A is a true copy of Amazon.com, Inc.'s Motion for Temporary Restraining Order; Order to Show Cause Why Preliminary Injunction Should Not Issue; and Order Permitting Expedited Discovery, filed in King County Superior Court, Cause No. 12-2-34992-4 SEA, on October 26, 2012, prior to the removal of the action to this court on October 29, 2012.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206 622 3150 main 206 757 7700 fax

DATED this 30th day of October, 2012.

Davis Wright Tremaine LLP
Attorneys for Plaintiff

By *s/Ladd B. Leavens*
Ladd B. Leavens
WSBA #11501
Jonathan M. Lloyd
WSBA #37413
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: laddleavens@dwt.com
jonathanlloyd@dwt.com

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main · 206.757.7700 fax

PROOF OF SERVICE

I hereby certify that on the date below indicated, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

kpetrak@byrneskeller.com

DATED this 30th day of October, 2010.

Davis Wright Tremaine LLP
Attorneys for Plaintiff

By *s/Ladd B. Leavens*
Ladd B. Leavens
WSBA #11501
Suite 2200
1201 Third Avenue
Seattle, Washington 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: laddleavens@dwt.com

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206 622 3150 main · 206 757 7700 fax

EXHIBIT A

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

AMAZON.COM, INC., Plaintiff, v. DANIEL A. POWERS, Defendant.	No. 12-2-34992-4 SEA MOTION FOR TEMPORARY RESTRAINING ORDER; ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND ORDER PERMITTING EXPEDITED DISCOVERY

I. INTRODUCTION AND RELIEF REQUESTED

Amazon.com, Inc. ("Amazon") is a leader in the new but burgeoning cloud computing business. Google, Inc. is one of its principal competitors. Daniel A. Powers worked at Amazon from 2010 through June 2012 as Vice President of Sales for Amazon Web Services. He was responsible for managing global sales efforts and business development strategy for all Amazon cloud computing products and for almost all of Amazon's cloud computing customers. Perhaps more so than any other single Amazon employee, Powers was privy to extremely confidential, competitively sensitive information about Amazon's cloud computing business. He had little experience in the cloud computing industry when he joined Amazon from IBM. Amazon gave Powers access to detailed information about Amazon's current and long-term strategic roadmaps, existing and prospective customers and business partners, existing products and services and plans for future products and services, pricing, discount policies, margins, marketing strategies, financial performance, and technology.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

To protect this confidential information and prevent its use by competitors, Amazon at the outset required Powers to execute a Confidentiality, Noncompetition and Invention Assignment Agreement ("Noncompetition Agreement"). In the Noncompetition Agreement, Powers promised to abide by non-disclosure and limited noncompetition restrictions, broad enough to protect Amazon's trade secrets, confidential information, and current and prospective customer and business relationships, but narrow enough to give Powers ample opportunity to find post-Amazon work, if necessary, in the area of technology product sales. When Powers agreed to resign from Amazon effective July 1, 2012, he signed a severance agreement. In this agreement, Powers expressly reaffirmed his noncompetition and nondisclosure obligations and Amazon agreed to (and did) give him $325,000 in severance pay.

Less than three months later, Powers went to work for Google as Google's "Director, Cloud Platform Sales." Powers' employment by Google in this position, or in any other capacity supporting Google's cloud computing business, will necessarily involve direct and/or indirect competition with Amazon for Amazon's existing or prospective customers, target markets, and/or business partners, and will therefore breach the Noncompetition Agreement and threaten—indeed, guarantee—that Powers will use Amazon's highly confidential information to compete with Amazon, in clear violation of his Noncompetition Agreement.

Amazon asks this Court to (1) temporarily restrain Powers from working for Google in a competitive cloud computing role, from soliciting Amazon's current and prospective cloud computing customers, and from soliciting Amazon employees to join Google; (2) authorize Amazon to take limited but expedited discovery from Powers and from Google; and (3) order Powers to show cause, if any he has, why he should not be preliminarily restrained as set forth above, pending trial.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

II. STATEMENT OF FACTS

A. Overview of Cloud Computing and Competition Between Amazon Web Services and Google Within the Cloud Computing Industry

Amazon Web Services ("AWS"), a wholly owned subsidiary of Amazon, develops and sells cloud computing products and services. Amazon (like some other companies, particularly Google) has acquired a great deal of computing capacity, in the form of its computer server "farms," and a great deal of IT infrastructure expertise. These resources and skills enable AWS to offer information technology infrastructure services – essentially digital storage, computing capacity, and infrastructure expertise – to individuals and businesses. Cloud computing allows customers access to shared, flexible computing resources on an on-demand basis. Customers essentially "rent" the specific computing resources they need, when they need them, either in place of or in conjunction with their own existing computing infrastructure. By "renting" AWS cloud computing resources, Amazon customers can avoid or minimize their own capital costs and operating expenses associated with buying and maintaining hardware and software and setting up or expanding their own IT departments. Customers pay only for the computing resources they actually use. Cloud computing resources also offer flexibility; the Amazon-owned computing capacity can rapidly scale up when customers experience increased demand, such as a spike in website traffic. *See* Declaration of Adam Selipsky ("Selipsky Decl."), ¶ 4.

Amazon was a pioneer in this burgeoning new business, and is now the industry leader. It offers a suite of cloud service offerings through AWS that allow third parties to, among other things, develop and run software applications; easily and cheaply store digital information; set up and search databases; and seamlessly bridge between their own data centers and the AWS cloud. *See id.*, ¶ 5.

Google is a significant competitor of Amazon in the cloud computing industry and offers cloud products and services that directly compete with AWS products and services. Google markets and sells its cloud computing offerings to many of the same market sectors, segments, and groups targeted by Amazon. In particular, Google offers, or has announced its

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

intention to offer, several cloud computing products and services that directly compete with Amazon's products, including Google App Engine, which competes directly with several Amazon offerings, including Amazon Elastic Beanstalk Amazon Elastic Compute Cloud ("Amazon EC2") and Amazon Simple Storage Service ("Amazon S3"); Google Cloud Storage, which competes directly with Amazon S3; and Google Compute Engine, which competes directly with Amazon EC2. *See id.*, ¶¶ 22-23. Numerous recent articles have described the growing competition between Amazon and Google in the cloud computing industry. *See id.*, ¶ 24 & Ex. D.

B. Powers' Background and Employment By Amazon

Powers joined Amazon in 2010 as VP, AWS Sales. *Id.*, ¶ 7. He had worked at IBM for the preceding 20 years. He held numerous sales and business development positions at IBM, but had little experience with cloud computing. *Id.*, ¶ 6.

Recognizing that Powers needed to have access to trade secrets and confidential information to do his job at Amazon, and that Amazon intended to pay him to develop customer information and business strategies that would themselves be confidential, Amazon required Powers to execute the Noncompetition Agreement as a condition of his employment. Powers signed and dated the Noncompetition Agreement on August 24, 2010, and returned it to Amazon. *See id.*, ¶ 8 & Ex. B. The Noncompetition Agreement prohibits Powers from misusing or disclosing Amazon's Confidential Information during and at any time after his employment with Amazon. The Noncompetition Agreement also contains certain limited noncompetition restrictions that apply for 18 months after the termination of Powers' employment. These noncompetition restrictions are designed to prevent a competitor from using Amazon's competitively sensitive confidential information against it. In his current employment with Google, Powers threatens to violate several of these restrictions:

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Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

First, Section 3(c)(ii) of the Noncompetition Agreement prohibits Powers from directly or indirectly accepting or soliciting business from Amazon's current and prospective customers, if the business is competitive products or services.

Second, Section 3(c)(iii) of the Noncompetition Agreement prohibits Powers from directly or indirectly accepting or soliciting business from Amazon's existing or planned target markets regarding competitive products or services.

Third, Section 3(c)(iv) of the Noncompetition Agreement prohibits Powers from directly or indirectly entering into, or proposing to enter into, competitive business arrangements with entities with which Amazon was involved in substantially the same business arrangement, or had discussed entering into such an arrangement, prior to the termination of his employment.

In addition, Section 3(b) of the Noncompetition Agreement prohibits Powers from directly or indirectly hiring or attempting to hire Amazon employees for 12 months after the termination of Powers' employment with Amazon. *Id.*, Ex. B.

Amazon emphasized in the Noncompetition Agreement (and Powers by signing it acknowledged) that these restrictions could "seriously limit [Powers'] future flexibility in many ways," and specified, as an example, that Section 3 "will make it impossible for [him] to seek or accept certain opportunities for a period of 18 months after the Termination Date, despite the fact that such opportunities might be highly attractive to [him] and provide greater compensation than any other available opportunities . . . ." *Id.* Powers acknowledged that the restrictions in the Noncompetition Agreement were "reasonable in view of the nature of the business in which [Amazon] is engaged, [Powers'] position with [Amazon], and [Powers'] knowledge of [Amazon's] business," and that his compensation (cash, equity, and otherwise) reflected his agreement to the confidentiality and noncompetition provisions of the Noncompetition Agreement. *Id.*

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Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

C. Powers' Access to Amazon's Confidential Information

As Vice President of Sales for AWS, Powers was responsible for developing, implementing and managing AWS sales and business development strategy for all products and all of its customers except governmental and education customers throughout the entire world. Powers was therefore privy to an extensive array of extremely confidential, competitively sensitive information about Amazon's cloud computing business. It would be hard to overstate the extent of Powers' exposure to and knowledge of Amazon's confidential information in this area.

Customer Information. Powers frequently met directly with Amazon's customers around the world. He knows the names of the individual customer contacts. He knows what Amazon cloud products and services each customer purchases, and what cloud products and services would be useful to the customer that the customer does not yet purchase (and, therefore, where new business opportunities lie with each customer). He knows the volume of Amazon's cloud business with each customer. He knows Amazon's margins on the products and services it sells to each customer. He knows which customers have expressed dissatisfaction with Amazon's cloud products and services, or with other aspects of the Amazon relationship, and he knows the reasons the customers have given for their dissatisfaction. He knows the identities of customers with whom Amazon is attempting to establish a business relationship. *See* Selipsky Decl., ¶¶ 9-12.

Business Strategies. Through Amazon's employment of him, Powers learned Amazon's cloud business strategies. Indeed, Amazon paid him to direct the development of many of those strategies. He knows how Amazon formulates prices for its cloud services and why it prices them as it does. He knows what new products Amazon intends to introduce, and where and when it intends to introduce them. He knows the kinds of customers to whom Amazon markets. He knows what kinds of customers and business products are most profitable. He knows the geographic areas in which Amazon does business, and he knows

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Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

Amazon's plans and timing for geographic expansion. He knows what difficulties Amazon has encountered in providing cloud services in various international areas, why it faces those difficulties, and how a competitor might avoid them. *See id.*, ¶ 13.

Financial Information. Powers had access to and knows all of the financial details of Amazon's cloud business. He knows total sales volume, and what kinds of customers and products account for what percentages of the volume. He knows Amazon's costs, its overall margins, its product-by-product margins, and its customer-by-customer margins. *See id.*, ¶ 14.

Powers acquired this information because Amazon employed and paid him to manage the development of much of it, and included him in the highest levels of decision-making on the cloud computing business. He attended the AWS Weekly Business Metrics Meetings, at which senior management discussed goals and metrics across all of AWS's products and services. He participated in AWS's semi-annual formal operations planning processes, OP1 and OP2, in which each operational segment within AWS makes detailed presentations about their proposed plans, budget and strategy over a several year period. Powers also had access to extensive confidential information regarding customer activities through Amazon's confidential and highly detailed customer relationship management database. In addition, Powers received several weekly e-mails containing highly confidential information, including the weekly Amazon Web Services Metrics Deck, containing hundreds of pages worth of detailed business statistics for AWS as a whole and for its individual products and services, as well as action items, goals, current and future marketing plans, and the identities of Amazon's top customers for each AWS product and service. Powers also received weekly "Sync" emails (containing confidential information specific to particular cloud computing products and services, or groups of related products and services), and bi-weekly Geo Updates (from the various geographical units in his sales organization). *See id.*, ¶¶ 15-17.

Amazon takes significant steps to maintain the confidentiality of information about its products, services, technology, and future plans. These efforts include requiring all employees

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

to sign confidentiality agreements, establishing internal procedures governing how confidential information is handled, and restricting access to certain of its systems and facilities. Much of the information that Powers learned and was exposed to during his employment with Amazon was treated as highly confidential and distributed on a limited basis within the company. *See id.*, ¶¶ 18-19.

D. Amazon's Confidential Information, Its Customers, and Its Competitive Business Position Are Threatened by Powers' Employment with Google.

On June 5, 2012, Powers agreed to resign from his employment with Amazon, effective July 1, 2012. In connection with his termination, Powers executed a Confidential Severance Agreement and Release (the "Severance Agreement"), in which he expressly reaffirmed his confidentiality, non-competition and non-solicitation obligations. Amazon in turn paid him $325,000 in severance pay. *See id.*, ¶¶ 20-21 & Ex. C.

Less than three months later, in late September, Powers went to work for Google, one of Amazon's direct competitors in the cloud computing industry. *See* Section A, *supra*; Declaration of Zane Brown in Support of Motion for Temporary Restraining Order ("Brown Decl."), ¶ 2. Amazon contacted both Powers and Google to confirm the nature of Powers' position and to inform both Powers and Google that Amazon viewed Google as a direct competitor in the cloud computing industry, and that Powers' working at Google selling its cloud computing products and services, or otherwise supporting its cloud computing business, would be a violation of Powers' noncompetition obligations to Amazon under the Noncompetition Agreement. *See* Brown Decl., ¶¶ 2-4. Powers' attorney (whom Google had hired for Powers) gave Powers' title as "Director, Cloud Platform Sales." *See id.*, ¶ 4. Google's in-house counsel described Powers' new title as, vaguely, "Project Management Director, Enterprise." When questioned about Powers' inconsistent titles, Google characterized the "Director, Cloud Platform Sales" title as an external title, and the "Project Management Director, Enterprise" title as an internal title. *See id.*, ¶ 5. Google characterized Powers' duties in this position as leading a team that sells and evangelizes Google's competitive products,

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

including Google App Engine, Google Cloud Storage, and Google Compute Engine, as well as other "new" products. *See id.*

Regardless of his formal title, if Powers works in any position within or supporting Google's cloud computing business, he will undoubtedly be responsible for expanding existing customer relationships, developing new business, enhancement of existing products, new product initiatives, and strategic business planning. He will be utilizing all of the knowledge, experience and information that Amazon provided to him – while paying him – for the benefit of Amazon's principal competitor. He would necessarily be competing with Amazon's respective cloud computing products and services and directly or indirectly marketing to Amazon's. Powers could not carry out those responsibilities without mis-using the significant amount of confidential Amazon information he possesses, in violation of his obligations under the Noncompetition Agreement and to Amazon's detriment. In addition, Powers would not be able to work for Google in any position within or supporting its cloud computing business without directly or indirectly assisting Google in making sales to the same markets Amazon targets. *See* Selipsky Decl., ¶ 26.

In an effort to avoid this litigation, Amazon and Google, through their in-house counsel, have been engaged in discussions regarding whether and to what extent Powers' activities would be restricted at Google. Brown Decl., ¶ 6. They have not reached any agreement. Google has advised Amazon, however, that Google intends unilaterally to restrict Powers' responsibilities to some extent, even in the absence of any agreement with Amazon. Specifically, Google has advised Amazon that for a relatively brief period (until January 31, 2013), Google will assign Powers to work on a number of products that are not competitive with Amazon products and exclude him from working on two of its competitive products, Google Cloud Storage and Google Compute Engine. In addition, Google has indicated that, for a slightly longer period (through March 31, 2013), Powers will not solicit AWS customers with whom he had direct contact or regarding whom he received confidential information in the

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

course of his employment with Amazon. *Id.*, ¶ 9. However, Google has advised Amazon that Powers will have immediate responsibility for business development and sales for Google App Engine, *id.*, ¶ 7, which is directly competitive with Amazon Web Services' Elastic Beanstalk, EC2, and S3. (All three of these Amazon products, and Google's Google App Engine, offer application developers the ability to write applications using cloud computing and storage, and offer developers and enterprises the ability to host operating applications, again using cloud computing and storage. Selipsky Decl., ¶¶ 27-31.) Notwithstanding Google's unilateral restrictions, therefore, Powers' duties at Google will require him – immediately – to directly or indirectly market competing Google products to Amazon's target market sectors, segments or groups, in violation of paragraph 3(c)(iii) of the Noncompetition Agreement, and in addition, unavoidably to use Amazon's confidential information for the benefit of Google, in violation of paragraph 2(b)(i) of the Noncompetition Agreement. A temporary restraining order and preliminary injunction are necessary and appropriate to prevent this misconduct from occurring. Without an injunction, Powers will be free to misuse Amazon's confidential information and trade secrets, solicit Amazon's cloud computing customers and employees, all in violation of his Noncompetition Agreement, and Amazon will suffer irreparable harm and substantial financial losses.

III. STATEMENT OF ISSUES

Is Amazon entitled to a Temporary Restraining Order, Order to Show Cause, Order Preserving Evidence, and an Order Allowing Expedited Discovery as requested above and as set forth in the attached proposed order?

IV. EVIDENCE RELIED UPON

The Declarations of Adam Selipsky and Zane Brown.

V. AUTHORITY AND ARGUMENT

Injunctive relief is necessary to stop Powers from breaching his noncompetition obligations to Amazon. Powers' work at Google will ***necessarily*** involve extensive direct and

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Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

indirect competition for Amazon customers, target markets, and business partners. Powers is intimately familiar with Amazon's confidential information in areas of competition between the companies, including in areas Google intends for him to work. Amazon is therefore entitled to an order restraining Powers from further violations of his contractual and statutory duties pursuant to CR 65.

Under Washington law,

> A party seeking relief through a temporary injunction must show a clear legal or equitable right, that there is a well-grounded fear of immediate invasion of right, and that the acts complained of have or will result in actual and substantial injury.

Rabon v. Seattle, 135 Wn.2d 278, 284 (1998); RCW 7.40.20. Injunctive relief is specifically provided for in cases such as this where there is an "[a]ctual or threatened misappropriation" of trade secrets. *See* RCW 19.108.020. All three elements are present here: (1) Amazon has a right to enforcement of its Noncompetition Agreement with Powers and to protect its confidential and trade secret information from competitors like Google; (2) these rights have been invaded by Powers' employment with a competitor; and (3) without relief, Amazon will continue to suffer irreparable harm as Powers and Google benefit from Powers' wrongful use of Amazon's confidential information to assist Google in unfairly competing with Amazon's cloud computing business, soliciting Amazon's customers and destroying Amazon's customer relationships. Amazon is therefore entitled to an order granting the injunctive relief it seeks.

Even if Powers and Google insist that Powers will not disclose Amazon's confidential information, the Noncompetition Agreement entitles Amazon to an additional level of protection. Given the degree of competition between Amazon and Google, and Powers' extensive knowledge of Amazon's confidential information, including information regarding customers and future business plans, Amazon is entitled to greater protection than the vague promises and practically unworkable "limitations" Powers and Google have offered. *See, e.g., Cabot Corp. v. King*, 790 F. Supp. 153, 156-58 (N.D. Ohio 1992) (recognizing that non-

Davis Wright Tremaine LLP
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Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

competes are enforceable even if an employee insists he will not disclose confidential information; the point is to give a company the security of knowing that it does not have to rely on such assurances).

The balance of equities also favors enforcement. From the outset Powers agreed to a non-compete and acknowledged that it would limit his ability to find later employment with an Amazon competitor. Amazon employed and paid him only after he executed the Noncompetition Agreement. He received substantial compensation from Amazon, including equity awards. When he left Amazon, Powers reaffirmed his noncompetition and nondisclosure obligations in the Severance Agreement and accepted Amazon's offer of a $325,000 severance payment. Amazon's willingness to make this severance payment was a function, in part, of Powers' reaffirmation of his noncompetition and nondisclosure obligations. It would be inequitable to allow Powers the full benefit of signing the Noncompetition Agreement and the Severance Agreement, while denying Amazon the full benefit of the post-employment restrictions for which it bargained.

A. Amazon Has a Clear Legal and Equitable Right to Enjoin Powers' Breach of the Noncompetition Agreement.

Under Washington law, a non-competition agreement will be enforced if it is (1) reasonably necessary to protect the employer's business, including its confidential information, or goodwill, (2) does not impose on the employee any greater restraint than is reasonably necessary for that protection, and (3) is not contrary to the public interest. *See, e.g., Perry v. Moran*, 109 Wn.2d 691, 698-701 (1987), *modified on other grounds*, 111 Wn.2d 885 (1989). The restrictions the Noncompetition Agreement places on Powers are reasonable limitations and satisfy this standard.

In addition, the Washington Uniform Trade Secrets Act ("WUTSA") protects Amazon's trade secrets from the threat of Powers' misappropriation, including misappropriation through his use and disclosure of that information in the course of his

Davis Wright Tremaine LLP
LAW OFFICES
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Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

employment with Google. *See* RCW 19.108 *et seq.* Amazon is entitled to injunctive relief to enforce this right. RCW 19.108.020.

Amazon therefore has a clear legal and equitable right to enforcement of the restrictions to which Powers agreed.

1. The Restraint is Reasonably Necessary to Protect Amazon's Confidential Business Information.

Amazon has a legitimate interest in protecting its confidential information and goodwill. *See Perry*, 109 Wn.2d at 702. It took Amazon years and significant resources to develop its cloud computing products and services, build its customer base, and develop relationships with its business partners. Amazon and Google compete to sell similar products and services to the same customers and target markets. *See* Selipsky Decl., ¶¶ 22-31. It is beyond dispute that Powers has a deep understanding of Amazon's underlying cloud computing products, services, technology, and strategic plans, and of its existing and prospective customers. *See id.*, ¶¶ 9-17.

Powers cannot simply unlearn the confidential information and trade secrets knowledge that he accumulated on a daily basis at Amazon. He will be unable to prevent himself from strategizing about Google's cloud computing products and services in light of what he knows about the same products and services at Amazon. He will know exactly where Amazon succeeded, where it stumbled, and where it intends to go in the future. He will know Amazon's prices and margins. He will know who its customers are, and which types of customers are most profitable. He will know which customers are dissatisfied with Amazon and why. He will know what product features the customers like. He will know Amazon's geographical expansion plans, and where Google should move to preempt them. Amazon's confidential information and trade secrets would be hugely valuable to Google. Amazon is contractually entitled to prevent Powers from handing over that asset, which he will do merely by working for Google in cloud computing.

Amazon required Powers to sign the Noncompetition Agreement precisely so that it could protect this information. *See id.*, ¶ 19. A non-compete allows an employer to share

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(206) 622-3150 · Fax: (206) 757-7700

confidential information with its employees without unwittingly handing it over to competitors. *See Copier Specialists, Inc. v. Gillen*, 76 Wn. App. 771, 774 (1995). The purpose of a non-compete is to protect an employer's confidential information and goodwill without putting the burden on the employer to prove actual misappropriation of confidential information – by which time the damage may have been done. A non-compete serves as an insurance policy when there is risk that the employee could divert the employer's business, given his knowledge of the employer's confidential information or relationships with the employer's customers. *See Nike, Inc. v. McCarthy*, 379 F.3d 576, 586 (9th Cir. 2004).

A non-compete is reasonably necessary to protect an employer's business where an employee, through his work for the employer, acquires valuable information about the nature and character of the employer's business and/or the identity and requirements of its customers. *See Wood v. May,* 73 Wn.2d 307, 309-10 (1968); *see also Nike*, 379 F.3d at 585. These exact circumstances are presented here, due to the extensive knowledge of Amazon's cloud computing business and its customers that Powers acquired while working at Amazon. As part of his job, Powers had direct and extensive access to, and was himself often involved in the development and refinement of, AWS's marketing and pricing of cloud computing services, and its strategic business plans, and its technology. Powers has detailed knowledge of AWS's existing and prospective customers, and relationships – developed during his employment at Amazon – with key decision makers at those existing customers. *See* Selipsky Decl., ¶¶ 10-12. Powers himself acknowledged that the customer information and sales and business development strategies that Amazon entrusted to him in the course of his employment constitute confidential information. *See id.*, Ex. B, § 2(a). One of the fundamental—and legitimate—purposes of noncompetition agreements is to protect from disclosure to competitors the customer and client lists that the employer makes available to the employee during the course of his or her employment. See, e.g., *Perry v. Moran, supra,* 109 Wn.2d at 700; *Wood v. May, supra,* 73 Wn.2d at 310; *Knight Vale & Gregory v. McDaniel*, 37 Wn. App.

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(206) 622-3150 · Fax: (206) 757-7700

366, 369-70 (1984); *see generally Racine v. Bender,* 141 Wash. 606 (1927). In addition, the courts of this state have recognized that customer lists, if not generally known to the public, are trade secrets under the Uniform Trade Secrets Act, RCW 19.108.020. *Ed Nowogroski Ins., Inc. v. Rucker,* 137 Wn.2d 427, 440-42, 971 P.2d 936 (1999); *Thola v. Henschell,* 140 Wn.App. 70, 78, 164 P.3d 524 (2007). A competitor with access to such information could easily adjust its sales strategy to undercut Amazon's sales efforts and steal its customers. The restrictions in the Noncompetition Agreement are reasonably necessary to protect Amazon's confidential information and trade secrets.

2. The Restrictions Are No Greater Than Is Reasonably Necessary to Protect Amazon's Legitimate Business Interests.

The covenants in Powers' Noncompetition Agreement place narrow restrictions on his post-employment conduct. They apply for only 18 months. They limit post-employment activities only with regard to companies offering substantially similar products or services in areas of business competitive with Amazon. *See* Selipsky Decl., Ex. B, § 3. They bar him from unfairly competing against Amazon with respect to customers, target markets, and business partners with whom Amazon had existing (or was actively developing) relations at the time he resigned. These narrowly-drawn, time-limited prohibitions are critically necessary to protect Amazon's legitimate business interest in its confidential customer and business strategy information. Washington courts routinely uphold covenants containing greater restrictions and of longer duration than those presented here. *See, e.g., Perry v. Moran,* 109 Wn.2d at 694-97; *Knight, Vale & Gregory supra*, 109 Wn.2d at 369-71 (3-year non-compete reasonable); *Racine v. Bender*, 141 Wash. at 610-15 (3-year non-compete "reasonably necessary to protect the business or good will of the employer"). Similarly, courts recognize that global businesses that compete globally may enforce global noncompetition agreements. *See, e.g., Cole v. Champion Enters., Inc.*, 305 Fed. Appx. 122, 130, 2008 WL 5427803, at *6 (4th Cir. 2008).

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3. The Noncompetition Agreement Imposes No Undue Hardship on the Public.

The public will not be harmed by Powers' adherence to promises he made as a condition of his employment with Amazon. The Noncompetition Agreement promotes fair competition by protecting Amazon's confidential information and goodwill from misuse, and allowing Google to compete freely with Amazon using its ***own*** confidential information. Moreover, with his skills and experience, Powers may contribute to the public good through a wide array of employers, or even with Google outside of the cloud computing arena; he simply cannot compete with Amazon in the cloud computing industry, where his knowledge and use of Amazon's confidential information and trade secrets would violate both the Noncompetition Agreement and the WUTSA.

B. Amazon Has a Reasonable Fear of a Violation.

Amazon has a reasonable fear that Powers will breach his obligations under the Noncompetition Agreement and disclose or use its confidential information and trade secrets to compete with Amazon. He is currently working for Google, a direct competitor of Amazon, in substantially the same position that he had held with Amazon, selling cloud computing products to customers worldwide. Google has actively positioned its products and services to compete with Amazon's cloud computing products and services. Google has released certain cloud computing products and services, has others in beta testing, and is expected to offer additional products and services later this year and next year. Amazon and Google will be competing for the same customer base and in the same market segments. *See* Selipsky Decl., ¶¶ 26-31.

Under these circumstances, Amazon has a reasonable fear that Powers is breaching and will continue to breach his obligations under the Noncompetition Agreement if he is not enjoined from continuing his work at Google. *See King v. Riveland*, 125 Wn.2d 500, 517-518 (1994) (injunction upheld to prevent immediate breach of confidentiality agreement); *Hollis v. Garwall, Inc.* 137 Wn.2d 683, 699 (1999) (injunctive relief available based on well-grounded

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fear of immediate breach of contract provisions); *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2nd Cir. 1999) (defendant's agreement to term providing for injunctive relief in event of breach can be viewed as an admission that the employer will suffer irreparable harm were he to breach the contract).

C. Powers' Breach Will Cause Amazon Actual and Substantial Injury

Powers' decision to join one of Amazon's direct competitors in the cloud computing industry, shortly after leaving Amazon, in the same or similar areas that he worked at Amazon, illustrates why his Noncompetition Agreement contains a limited non-compete and why a TRO is necessary. If Powers is not enjoined, the non-compete's essential purpose of protecting Amazon's confidential information and goodwill will be frustrated. *See Perry*, 109 Wn.2d at 701-702 (purpose of valid restraint is "to prevent competitive use, for a time, of information or relationships which pertain peculiarly to the employer and which the employee acquired in the course of the employment."). Amazon would then have no effective remedy, as the harm caused by Powers' breach will be immediate and hard to quantify. *See Management, Inc. v. Schassberger*, 39 Wn.2d 321, 328 (1951) ("the harm caused by the breach usually is incapable of accurate estimation"). Absent a TRO, Powers will enjoy the full benefit of his bargain with Amazon, while denying Amazon the benefits to which it is entitled under the Noncompetition Agreement. Such an inequitable result should be prevented via injunctive relief, as the parties already agreed. *See* Noncompetition Agreement § 6.

VI. THE COURT SHOULD ORDER EXPEDITED DISCOVERY.

Finally, Amazon asks that the Court permit discovery on an expedited basis. Amazon believes such an Order will benefit both parties by permitting them to prepare for the Preliminary Injunction hearing on this matter. Specifically, Amazon requests an order requiring that Powers respond to the proposed written discovery, attached as **Exhibit A** hereto, within five business days, that Amazon be permitted to take the deposition of Powers for no

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more than seven hours, and that each party be permitted to take two additional depositions of no more than seven hours each, on five days' notice.

The Superior Court rules specifically provide that a plaintiff may obtain leave of court to take early discovery. *See* CR 30(a) (early depositions); CR 34(b) (early document production). "Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings." *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 844 (D.D.C. 1996). *See also, Murray Publ. Co. v. Malmquist*, 66 Wn. App. 318, 323 (1992) (granting expedited discovery).

VII. CONCLUSION

For the foregoing reasons, Amazon respectfully requests entry of an Order in the form presented herewith barring Powers until the preliminary injunction hearing from working in any cloud computing role at Google, communicating with any Amazon cloud computing active or prospective customer, or soliciting any current Amazon employee to join Google. In addition, Amazon requests that the Court grant it leave to take limited expedited discovery.

A proposed order is attached as Exhibit B.

DATED this 26th day of October, 2012.

Davis Wright Tremaine LLP
Attorneys for Amazon.com, Inc.

By _____
Ladd B. Leavens, WSBA #11501
Jonathan M. Lloyd, WSBA #37413

1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: 206-622-3150
Facsimile: 206-757-7700
E-mail: laddleavens@dwt.com
E-mail: jonathanlloyd@dwt.com

EXHIBIT A

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

AMAZON.COM, INC., Plaintiff, v. DANIEL A. POWERS, Defendant.	No. 12-2-34992-4 SEA AMAZON'S FIRST WRITTEN DISCOVERY TO DEFENDANT DANIEL A. POWERS

This written discovery is propounded pursuant to the Civil Rules, and pursuant to the Temporary Restraining Order, Order to Show Cause, and Order Granting Limited Expedited Discovery entered in the captioned action. Please produce the documents described herein for inspection and copying at the offices of counsel for plaintiff, or at such other place as may be agreed by counsel, not later than _____ days following service on counsel for defendant.

The word "documents" as used herein has the meaning given it in CR 34(a).

WRITTEN DISCOVERY NO. 1 (RFP): Produce all documents that refer or relate to your recruitment, hiring, employment, and anticipated and actual job responsibilities at Google, Inc.

RESPONSE:

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LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

WRITTEN DISCOVERY NO. 2 (RFP): Produce all documents (including but not limited to documents constituting communications among any persons or entities), copies or summaries of which, or information from which, you have provided to any agent or employee of Google or any subsidiary thereof, and that you obtained in the course of or as the result of your employment with Amazon.

RESPONSE:

WRITTEN DISCOVERY NO. 3(RFP): Produce all documents that refer or relate to Amazon's cloud computing business, including but not limited to all documents that you acquired during or as a result of your employment at Amazon.

RESPONSE:

WRITTEN DISCOVERY NO. 4 (Interrogatory): State your current residence address.

ANSWER:

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax (206) 757-7700

DATED this ____ day of October, 2012.

Davis Wright Tremaine LLP
Attorneys for Plaintiff Amazon.com, Inc.

By _____
Ladd B. Leavens, WSBA #11501

ANSWERS dated this ___ day of _____, 2012.

Attorneys for Defendants

By _____
_____

VERIFICATION

Daniel A. Powers hereby declares:

I am the defendant in the above-entitled matter. I have read the foregoing answers and responses to Amazon's First Written Discovery to Defendant Daniel A. Powers, know the contents thereof, and verify that the answers and responses are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true.

DATED this _____ day of _____, 2012.

_____
Daniel A. Powers

Davis Wright Tremaine LLP
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Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

EXHIBIT B

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

AMAZON.COM, INC., Plaintiff, v. DANIEL A. POWERS, Defendant.	No. 12-2-34992-4 SEA [PROPOSED] TEMPORARY RESTRAINING ORDER, ORDER TO SHOW CAUSE, AND ORDER GRANTING LIMITED EXPEDITED DISCOVERY

This matter came on for hearing before this Court on plaintiff Amazon.com, Inc.'s Motion for Temporary Restraining Order, Order to Show Cause, and Order Granting Limited Expedited Discovery (the "Motion"). The Defendant Daniel A. Powers ("Powers" or "Defendant") or his attorneys received notice of the hearing on the Motion.

Having considered the Motion and all papers offered in support of and in opposition thereto, including the Declaration of Adam Selipsky, the Declaration of Zane Brown, and _____, and all exhibits attached thereto, and having considered the arguments of counsel, it appears to the satisfaction of this Court that Amazon.com, Inc. ("Amazon") has established a clear legal or equitable right and a well-grounded fear of immediate invasion of that right, that the acts complained of either are resulting or will result in actual and substantial injury to Amazon, and that the equities dictate that a Temporary Restraining Order in the form requested should be entered.

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Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

Now, therefore, it is hereby ORDERED that pending a hearing on this Order to Show Cause, including any period of extension of the hearing, Defendant Powers is hereby temporary restrained and enjoined as follows:

1. Defendant Powers is enjoined from engaging in any activity that directly or indirectly supports any aspect of Google's cloud computing business, including, without limitation, work related to Google App Engine, Google Cloud Storage and Google Compute Engine.

2. Defendant Powers and any person or entity acting in concert with him are enjoined from disclosing or misappropriating for their own use or benefit, or for the use and benefit of any other person or entity, any confidential or propriety information or trade secrets of Amazon.com, Inc., or its subsidiaries (together "Amazon"). The phrase "confidential or propriety information or trade secrets" includes all data and information in whatever form, tangible or intangible, that is not generally known to the public and that relates to the business, technology, practices, products, marketing, sales, services, finances, or legal affairs of Amazon, including without limitation information about: (a) actual or prospective Amazon customers, suppliers, and business partners; (b) Amazon business, sales, marketing, technical, financial, and legal plans, proposals, and projections; and (c) Amazon concepts, techniques, processes, methods, systems, designs, programs, code, formulas, research, experimental work, and work in progress.

3. Defendant Powers is enjoined to return to Amazon (or its counsel), by the close of business on the second business day following the entry of this order, all property, documents, files, reports, work product, and/or other materials that Defendant Powers has in his possession, custody, or control that he obtained from Amazon or that constitute business information or work product owned by Amazon.

IT IS FURTHER ORDERED that Amazon is entitled to take limited discovery on an expedited basis. Amazon may serve on counsel for Defendant Powers Amazon's First Written

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Suite 2200 · 1201 Third Avenue
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Discovery attached hereto as Exhibit A. Defendant Powers and his counsel shall respond to these discovery requests no later than _____, 2012. In addition, Amazon may take up to three (3) depositions, including the deposition of Defendant Powers, and depositions of Google or its employees, upon three (3) days' notice as to Defendant Powers, and five (5) days' notice as to Google or its employees, such depositions to occur prior to _____, 2012.

IT IS FURTHER ORDERED that as a condition of the enforceability of this Order, Amazon shall post bond or cash security, in the amount of _____, under CR 65(c), as security for the payment of such costs and damages as may be incurred by Defendant Powers in the event Defendant Powers is found to have been wrongly enjoined or restrained by this Order.

IT IS FURTHER ORDERED that the Defendant shall appear before this Court, the Honorable _____ presiding, on the ___ day of _____, 2012, then and there to show cause, if any he has, why a preliminary injunction, granting on a preliminary basis the relief set forth above, should not be entered pending the trial of this action.

DATED this ____ day of _____, 2012.

_____
Judge/Court Commissioner

Presented by:

_____
Ladd B. Leavens
WSBA #11501
Of Davis Wright Tremaine LLP
Attorneys for Plaintiff Amazon.com, Inc.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700